

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

SHEILA R. SISK,	)	
	)	
Plaintiff,	)	
	)	No. 1:09-CV-220
v.	)	<i>Collier / Lee</i>
	)	
	)	
COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

Before the Court is Plaintiff's motion for attorney's fees under the Equal Access to Justice Act ("EAJA"), [28 U.S.C. §2412\(d\)](#) [Doc. [23](#)].<sup>1</sup> Plaintiff has submitted an itemized record of the time spent by her counsel working on her case [Doc. [23](#)-3]. Defendant has filed a response stating he has no objection to Plaintiff's motion.

**I. ENTITLEMENT TO FEES**

In order to recover attorney's fees under the EAJA, four conditions must be met: (1) the plaintiff must be a prevailing party; (2) the application for attorney's fees, including an itemized justification for the amount requested, must be filed within 30 days of the final judgment in the action; (3) no special circumstances warranting denial of fees may exist; and (4) the government's position must be without substantial justification. [28 U.S.C. §2412\(d\)](#). See also [Damron v. Comm'r of Soc. Sec.](#), 104 F.3d 853, 855 (6th Cir. 1997). Here, Defendant does not dispute Plaintiff is a

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<sup>1</sup> This matter has been referred to the undersigned for a report and recommendation pursuant to [28 U.S.C. §636\(b\)](#) and [Fed. R. Civ. P. 72\(b\)](#). See [In re: Referral of Social Security Cases, SO-09-01](#) (Feb. 2009).

prevailing party. See [Shalala v. Shafer, 509 U.S. 292, 302 \(1993\)](#) (“A sentence-four remand, of course, is a judgment *for* the plaintiff.”). Second, Plaintiff’s motion is timely. See [Fed. R. App. P. 4\(a\)\(1\)\(B\), \(a\)\(7\); Shafer, 509 U.S. at 298](#) (quoting [Melkonyan v. Sullivan, 501 U.S. 89, 102 \(1991\)](#)). Third, Defendant bears the burden of proof to show his position was substantially justified, [Peck v. Comm’r of Soc. Sec., 165 F. App’x 443, 446 \(6th Cir. 2006\)](#), and Defendant has declined to attempt any such showing. And fourth, in the absence of any opposition from Defendant, the Court finds no special circumstances warranting denial of fees. I therefore **CONCLUDE** Plaintiff is entitled to his reasonable attorney’s fees. See [28 U.S.C. § 2412\(d\)\(2\)\(A\)](#) (“‘fees and other expenses’ includes . . . reasonable attorney fees”).

## **II. AMOUNT OF FEES**

An attorney fee award under the EAJA cannot exceed \$125 per hour unless justified by increases in the cost of living. [28 U.S.C. § 2412\(d\)\(2\)\(A\)](#). Plaintiff seeks fees at an hourly rate of \$174.24, a request she avers is proportional to the increase in the cost of living reflected in the Consumer Price Index [Doc. [23](#)-2]. Defendant points out, however, that “[t]he proper mathematical expression in this district for calculating hourly rates for attorney work under the EAJA” is set by [Cook v. Barnhart, 246 F. Supp. 2d 908, 910 \(E.D. Tenn. 2003\)](#). According to Defendant, applying that formula here yields an hourly rate of \$168. Defendant also represents that Plaintiff does not contest this calculation, which amounts to a mere \$190.32 adjustment to Plaintiff’s original request. Accordingly, I **RECOMMEND** Plaintiff be awarded attorney fees in the amount of \$168 per hour for 30.5 hours, for a total of **\$5124**. Although it appears that Plaintiff has assigned her right to any fee award to her attorneys, the fee award is payable directly to Plaintiff. See [Astrue v. Ratliff, 130 S. Ct. 2521, 2526 \(2010\)](#). Plaintiff also seeks reimbursement for the Court’s \$350 filing fee, and I

**RECOMMEND** she be allowed that cost. See [28 U.S.C. § 2412\(a\)\(1\), \(d\)\(1\)\(A\)](#).

### III. CONCLUSION

Accordingly, I **RECOMMEND**<sup>2</sup> Plaintiff's motion for attorney's fees and costs under the EAJA [Doc. [23](#)] be **GRANTED** to the extent that Plaintiff be awarded fees in the amount of **\$5474**.

*s/ Susan K. Lee*

SUSAN K. LEE  
UNITED STATES MAGISTRATE JUDGE

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<sup>2</sup> Any objections to this report and recommendation must be served and filed within fourteen (14) days after service of a copy of this recommended disposition on the objecting party. Such objections must conform to the requirements of [Rule 72\(b\) of the Federal Rules of Civil Procedure](#). Failure to file objections within the time specified waives the right to appeal the district court's order. [Thomas v. Arn](#), 474 U.S. 140, 149 n.7 (1985). The district court need not provide *de novo* review where objections to this report and recommendation are frivolous, conclusive and general. [Mira v. Marshall](#), 806 F.2d 636, 637 (6th Cir. 1986). Only specific objections are reserved for appellate review. [Smith v. Detroit Fed'n of Teachers](#), 829 F.2d 1370, 1373 (6th Cir. 1987).

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